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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Initial reports submitted by States parties under articles 16 and 17 of the Covenant

Addendum

AFGHANISTAN

[25 July 1991]

GE.91-17209/3573B

Introduction

1. The Government of the Republic of Afghanistan is pleased to submit this initial report on articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights.

2. International action by Afghanistan has obviously reflected its own internal position. There is virtually no important international or regional instrument to which it has not given its support. Afghan legislation has kept pace with the evolution of advances in human rights and has incorporated them in the Constitution and laws of the country, taking into account the fact that man, the basic nucleus of society, should be protected and safeguarded by the State.

3. In accordance with article 133 of its Constitution, the Republic of Afghanistan respects and observes the Charter of the United Nations, the Universal Declaration of Human Rights and other accepted principles and norms of international law. Therefore, all the international instruments, including the Covenant, are taken into consideration, not only by the legislative branch at the time of the adoption of legislation but also by the executive branch in its implementation and the judicial branch during judgement of cases which have resulted from disputes.

4. The International Covenant on Economic, Social and Cultural Rights, to which Afghanistan is a party, has been reflected in various aspects of the legal activities of the organs of the Republic. In particular, in the Constitution, adopted in 1987, and the amendment thereto approved in 1990, serious attention was given to the Covenant, and the provisions of the Covenant are widely reflected in the provisions of the Constitution.

Article 1

5. The State of Afghanistan respects and reaffirms the right of nations to self-determination embodied in the Charter of the United Nations and in the Covenant and has expressed its constructive views concerning the consolidation of relations between nations through cooperation with the United Nations organizations. The goodwill and determination of the Republic of Afghanistan are reflected in the existing laws of the country, which fully comply with the Covenant. National sovereignty in the Republic of Afghanistan belongs to the people. The people exercise national sovereignty through Loya Jirgah (the National Assembly) and local councils.

6. In the Republic of Afghanistan, utilization of natural resources is considered an important matter for the progress of the country. In this respect, article 20 of the Constitution provides that mineral resources, forests, pastures and other natural wealth, basic energy resources, historical artefacts, banks, insurance institutions, means of communication, radio, television, major dams, ports and highways shall be State property. Paragraph 2 of the same article provides that private investment for the exploitation of forests, pastures, energy resources, mines, banks and insurance institutions and the buying and selling of means of communications are permissible in accordance with article 13 of the Constitution, which stipulates:

"The Republic of Afghanistan comprises many nationalities. The State shall follow a policy of promoting the all-round growth of understanding, friendship and cooperation between all nationalities, clans and tribes of the country to ensure political, economic, social and cultural equality, and the rapid growth and development of regions which are socially, economically and culturally backward."

Article 2

7. The State of Afghanistan has taken positive steps through technical and economic cooperation towards achieving the full realization of the rights recognized in the Covenant. The State cooperates fully with the private sector and with foreign investors, awarding contracts in various spheres. Economic, social and cultural matters in the less developed areas of the country are of primary concern. The State has adopted necessary measures in order to foster the culture, language, literature, traditions and folklore of the different nationalities, clans and tribes. Similarly, the State is undertaking an extensive and comprehensive programme for the development of industry, trade, construction, transport and services. Likewise, programmes are being implemented for the conservation and utilization of natural resources, the improvement of the environment and the prevention of pollution, and the conservation of plant and animal species.

Article 3

8. In accordance with article 38 of the Constitution of the Republic of Afghanistan, men and women have equal rights and duties in the eyes of the law, irrespective of their national, racial, linguistic, tribal, educational and social status, religious creed, political conviction, occupation, kinship, wealth or residence. The granting of any illegal privilege is prohibited, as is discrimination against citizens in the enjoyment of their rights and the fulfilment of their duties. The State has taken positive steps towards achieving a democratic society and today the people have the right to take part in elections, demonstrations and strikes and to vote without any restrictions, in accordance with the provisions of the law.

Article 4

9. The Republic of Afghanistan is striving to construct a democratic society. To that end, public order and the sovereignty of the law are being consolidated day by day and nobody may be accorded the rights of others. Likewise, the safety of individuals and families and the security of offices and administrations have been guaranteed.

Article 5

10. In accordance with the International Covenant on Economic, Social and Cultural Rights, States which are parties to the Covenant respect its provisions. Thus, the basic human rights recorded in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights have been reflected in articles 33 to 63 of the Constitution, and article 64 stipulates:

> "The State shall provide the necessary conditions for citizens to exercise their fundamental rights and liberties and discharge their duties. No person has the right to exercise the rights and liberties enshrined in the law against the public interest and to the detriment of the rights and liberties of other citizens."

11. The restriction of these rights and liberties, the prohibition of which is enshrined in the above article, is subject to sanctions under the penal code or Islamic law, depending on the nature of the offence. In the same way, citizens who suffer as the result of illegal actions on the part of State organs, social organizations or officials must be compensated. In the Republic of Afghanistan, liberty and human dignity are inviolable and the State respects and protects them. Accused persons are presumed innocent unless found guilty by the final verdict of a court of law. No act is considered a crime, except as prescribed by law. No person may be accused of committing a crime other than in accordance with the provisions of the law. No person may be arrested or detained except in accordance with the law. No person may be punished except by the verdict of a court in accordance with the provisions of the law and in proportion to the crime committed. No person may be punished for a crime committed by another. The accused has the right to defend himself personally or through an advocate.

Article 6

12. In the Republic of Afghanistan, the State is responsible for determining, consolidating and regulating working conditions and defending workers' rights with labour and production management, the rational use of labour resources, the promotion of effective social production, the general introduction of progressive wage and social security systems in order to improve workers' standards of living and their material, social and cultural level. The right to work has been reflected in the relevant legislative documents and has been accorded much respect. For example, article 54 of the Constitution stipulates:

> "Citizens of the Republic of Afghanistan, subject to the needs of society and on the basis of their specialization, have the right to hold State posts and choose their occupation".

13. The Labour Code is the most important legislative document regulating labour relations in the Republic of Afghanistan. The right to work is guaranteed by the State. For example, article 8 of the Labour Code stipulates:

> "The equal right to work for citizens is guaranteed without any kind of discrimination as to race, colour, sex, language, religion, or political or other opinion".

Paragraph 2 of the same article stipulates that every kind of direct and indirect discrimination against citizens in their work, with regard to their wages, professional specialization, and the right to education and social security is forbidden. Likewise, article 11 of the Labour Code specifically stipulates that compulsory work is not permissible. Employment in different categories and sectors takes place on the basis of the provisions of the Labour Code, which reflects all the norms of the International Labour Organisation (ILO) and human rights issues. The Labour Code and other

legislation related to it, such as the law concerning government employees and the document on overtime work with climatic and regional variations, which regulate working conditions in the Republic of Afghanistan have been finalized and are in force.

14. Recruitment in the Republic of Afghanistan is subject to specific provisions of the Labour Code and the relevant documents and no office may ignore an individual's rights nor discharge an employee without legal consideration. In order to safeguard the rights of citizens, the Labour Code authorizes them to present complaints to the commission on the settlement of disputes which is to be set up in every government body. If their complaints are not considered by that commission, they can appeal to the court.

15. In the Republic of Afghanistan, acute unemployment as it exists in other countries is not common. A large proportion of the manpower is engaged in the agricultural and livestock sectors. There is not much unemployment in these sectors. In the State sector, manpower is allocated on the basis of the manpower distribution plan, which is drawn up annually. Under article 54 of the Constitution everyone has the right to choose his or her occupation freely according to his or her field and preference. In order to use manpower effectively, significance is attached to vocational and professional training and a large number of technical and professional schools exist to train young people.

Article 7

16. In the Republic of Afghanistan, the annual balance of working time, the time at which the working day and shifts begin and end, and other matters related to the work regime have been strictly assessed and determined. For example, a 30-hour working week has been established for teenagers under the age of 16, and a 35-hour week for teenagers aged 16 to 18. For employees who work underground and those engaged in work which has health risks a 35-hour week is specified.

17. Remuneration for work is stipulated in the legislative documents of the Republic of Afghanistan, such as the Constitution, the Labour Code and its annexes, and in collective contracts. For example, article 52 of the Constitution stipulates: "Citizens of the Republic of Afghanistan have the right to work and are entitled to equal pay for equal work". Similarly, article 9 of the Labour Code provides that "Women are guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work". In addition, under the Labour Code and the law on civil servants, workers in the Republic of Afghanistan have equal rights in respect of social security, leave and other rights which are clearly embodied in the laws of the country. In the State and mixed sectors, the wages at different ranks and levels are studied by the Ministry of Labour and Social Affairs in the light of price fluctuations and proposals on wage adjustments are presented to the Council of the Ministry. The minimum wage level in Afghanistan is determined by the State and, in accordance with the Labour Code, no organization is allowed to pay its employees less than the minimum wage. For example, article 75, paragraph 3, of the law on civil servants stipulates that the minimum rate of wages cannot be less than that designated by the State.

18. In order to regulate employment in the State sector, manpower is allocated to sectors and workplaces on the basis of education, skills and other criteria. Data is collected in the mixed and State sectors by the Ministry of Central Statistics, using a centralized system. On the basis of the calculations made from the first census of the country's population, carried out in 1979, manpower amounted to 6.1 million persons in 1990, of whom 5.9 million were employed and about 206,000 were seeking work and were accounted for among the undistributed manpower.

19. Article 75, paragraph 2, of the Labour Code provides:

> "Discrimination of any kind as to race, sex, nationality, origin, language, age, religion, property, residence and social origin are forbidden with respect to the payment of wages".

In addition to regular wages, other remuneration, such as bonuses, academic allowances, wages for work affecting health, wages for heavy work and for professional and engineering skills, are specified in the law and are paid to the employees concerned. Also in accordance with the Labour Code, cash prizes, certificates of good work, medals and orders are granted to employees in recognition of good performance. Wages in the Republic of Afghanistan are paid in the form of the time wage and the work wage. In addition, coupons for staple items such as flour, vegetable oil, sugar, laundry soap and tea are distributed free of charge to government employees and workers. If the said items are counted at market prices and combined with the employees' average salaries, it can be said that the monthly salary of a government employee at an intermediate rank will amount to Afg. 16,000. Additional wages are paid for overtime work. As has been pointed out, in the case of wages women enjoy equal rights with men for equal and similar work. The Labour Code has provided additional benefits to women who work in offices and organizations. They are entitled to 90 days' maternity leave with pay. In addition, after the maternity leave, mothers can take up to 270 days' leave without pay, which counts towards their term of service. Night work is not permissible for pregnant women and they and nursing mothers cannot be assigned heavy work. In addition to holidays, nursing mothers are provided with a pause during the working day. Refusal to admit women to employment or reducing their wages is not permissible, in accordance with article 134 of the Labour Code.

20. Provisions are laid down in chapter 11 of the Labour Code for the maintenance of safe and healthy working conditions. In addition, a law on safety at work came into effect in 1987. In accordance with this rule, all organizations are bound to provide a safe and healthy working environment. All employees in the Republic of Afghanistan, men and women, enjoy equal opportunities for promotion, on the basis of fixed standards.

21. In accordance with the Labour Code, all employees in the Republic of Afghanistan enjoy the right to leave with pay: 20 days' leisure with pay, 10 days' personal leave and 20 days' sick leave. In addition, also in accordance with the Labour Code, employees in Afghanistan are entitled to pause for prayer and meals and to weekly holidays, festival holidays and other general holidays with pay. In accordance with article 40 of the Labour Code,

the regular working week cannot exceed 40 hours, on average. According to the nature of the work, working hours in Afghanistan will be organized in a manner not to conflict with other categories of work in respect of transportation and the beginning and end of working time.

22. The Investigation and Control Office of the Council of Ministers and the Labour Investigation Department of the Ministry of Labour and Social Affairs are responsible for the implementation and observance of the Labour Code. In addition, the National Union of Afghan Employees does its utmost to defend the rights of workers in respect of the implementation of the relevant documents.

Article 8

23. The State provides comprehensive assistance in improving the professional skills of craftsmen, in providing work equipment and in the sale of products, and protects the rights of craftsmen, including their right to voluntary participation in trade unions and cooperatives. This is aimed at developing crafts and industry and the talents of people in different fields and at limiting the liberty of those who infringe the relevant provisions. The Government of the Republic of Afghanistan takes effective steps in accordance with the law to ensure good relations with other countries and the establishment of diplomatic relations and of agreements with other countries and with international organizations and federations.

24. In accordance with article 50 of the Constitution, citizens of the Republic of Afghanistan have the right to assemble in peaceful demonstration and to strike. Likewise, in accordance with article 7 of the Constitution, trade unions and social organizations are allowed to be formed. The rights and privileges of army personnel and the police are regulated by provisions of the law. The army and the police are responsible for ensuring security and safeguarding public order.

Article 9

25. The subject of social security has been taken into account in chapter 15 of the Labour Code, as follows:

(a) Financial assistance for mothers during maternity leave includes wages, lunch allowance and the provision of coupons.

(b) Coupons are granted to government employees whereby articles such as flour, vegetable oil, sugar, tea, soup and laundry services are provided free of charge; the price of other coupon items is subsidized by the Government.

(c) Health services are free of charge in the Republic of Afghanistan. In the event of work-related accidents and sickness, the organization is obliged to treat its employees at government expense. In addition, employers have to pay compensation to employees who suffer injury or infirmity while on duty.

Article 10

26. Article 15 of the Constitution states that in the Republic of Afghanistan the family constitutes the basic unit of society. The State shall adopt the necessary measures to ensure the health of mothers and children and for the upbringing of the children. The growth and protection of the family and the provision of maternal and child care receive the all-round attention of the State in order to ensure that families enjoy their full rights and security. Article 16 of the Constitution provides that the State shall take permanent care of the young generation and children and their health, shall offer the necessary opportunities for their education, employment, recreation, rest and spiritual and physical growth, and shall help the talents of young people to blossom. A woman is entitled to 90 days' maternity leave with pay and other work entitlements; two thirds of that leave can be used after the birth, and one third either before or after the birth. In the event of premature or twin or more births, she can take her leave with pay after the birth and in addition another 15 days on the basis of a doctor's certificate. After the termination of maternity leave, she can request leave without pay for a period not exceeding 270 days. This leave counts as part of her working life and for the purposes of promotion and retirement benefits. From the date she officially returns to work she is entitled to the same wages as previously and will be assigned to her former job or its equivalent (article 132 of the Labour Code).

Article 11

27. The Republic of Afghanistan supports the United Nations programme for the eradication of hunger throughout the world and commemorates World Food Day; it respects the provisions of the Convention and supports the distribution of food resources by the United Nations Organizations.

Article 12

28. The protection of individuals' health, as well as environmental and industrial hygiene are among the major programmes of the State and are being carried out with the cooperation of the World Health Organization (WHO) and with United Nations humanitarian assistance. For example, malaria eradication is gaining ground day by day. The Government, through the Ministry of Public Health, is taking comprehensive measures to control environmental pollution. Likewise, in the industrial sector appropriate measures are being taken in line with industrial advances. The State has taken comprehensive steps to treat and control epidemic diseases in accordance with WHO programmes. In the contemporary world, campaigns are being waged against AIDS and other diseases which shock mankind, and the Republic of Afghanistan is also trying to implement such campaigns. The establishment of clinics, the supply of medical instruments and equipment and the training and provision of health personnel in cooperation with WHO are examples of efforts being made in this direction.

29. In accordance with article 57 of the Constitution, citizens of the Republic of Afghanistan have the right to health care and social security. The State shall adopt the necessary measures for the provision of comprehensive, balanced and country-wide medical services, and of additional

hospitals and health centres, for the training of doctors and medical personnel, the prevention of epidemic diseases, the expansion of free health services, the establishment and encouragement of private medical services and the improvement of the material welfare of the aged, the war- and work-disabled and the dependents of war victims.

30. The law regulating the activities of the Ministry of Public Health was published in issue No. 493 of the Offical Gazette, dated October 1980. Article 7 of that law provides for an education campaign for health care, especially with regard to diseases causing mortality among children, and for improving medical care for women and children. It also provides for action to safeguard the environment the improvement of sanitary conditions, a campaign against social disease epidemics and extensive dissemination of information among the people in that regard, the design and execution of practical measures with ministries and organizations to provide medical care for workers, safeguarding the health of the people, and the elimination of the causes of professional diseases and accidents.

31. The employment of women and teenagers in heavy physical work and work which can impair the health is prohibited. A list of such work has been established. A special regulation exists concerning night work for women and teenagers. Pregnant women and mothers with young children cannot work at night.

32. The law on mental health was published in issue No. 635 of the Official Gazette, dated 5 May 1987. In accordance with article 10, paragraphs 1 to 4, of that law, the necessary measures shall be taken to protect and treat individuals suffering from mental disturbance and to supervise the provision of such protection and treatment by the concerned organs. Article 10, paragraph 5, provides for cooperation of the Central Office of Mental Health with WHO and other international organizations and for ensuring the maximum effectiveness of this cooperation. Article 14, paragraph 1, calls for the organization of protective services and the rehabilitation of mentally disturbed persons, as well as the exertion of efforts to improve and develop the said activities in accordance with demand, the objective socio-economic conditions and advances in science and knowledge. Article 14, paragraph 4, provides for participation in the scientific research carried out in the countries of the region and the world in the framework of scientific programmes and WHO technical assistance and that of other concerned international organizations and friendly countries. In accordance with article 20, paragraph 1, the Government of the Republic of Afghanistan provides the necessary mental health facilities free of charge at the centres concerned in line with accepted medical standards. Article 20, paragraph 3, specifies that the provision of mental health care for those in need of such treatment, within existing possibilities and facilities, is part of the health obligations of the authorities.

Article 13

33. Citizens of the Republic of Afghanistan have the right to free education the State shall adopt the necessary measures for eradicating illiteracy, extending the provision of education, providing education in the mother

tongue, ensuring compulsory primary education, gradually expanding general, intermediate, technical and vocational education and developing higher education for training national cadres.

34. In the Republic of Afghanistan, the private sector and foreign nationals are permitted to establish schools in accordance with the provisions of the law. Young people are playing a significant role in the rehabilitation of the country. Education and mental and physical training are significant duties that the Republic of Afghanistan has in mind for the development of young people. For that reason, the Government takes permanent care of the young generation and provides the necessary conditions for their education, employment, rest, recreation and moral and physical upbringing. It also helps in developing the talents of teenagers and youth and is expanding the basis for inter-State understanding and friendship.

35. Article 5 of the law on the Ministry of Education published in issue No. 507 of the Offical Gazette, dated May 1981, calls for:

1. Provision of the necessary conditions and practical steps in order to eliminate illiteracy;

2. The ensurance of favourable conditions for training and nurturing all children of school age by providing general compulsory primary education, free of charge;

3. Preparation of youth for life and for a judicious choice of profession;

4. The development and subsequent expansion of the educational system and of kindergartens, and an increase in the number of State schools, religious schools and other forms of social training of children;

5. Consolidation of mutual relations with other countries and with international organizations in the field of education, in accordance with the policy of the State;

6. The adoption of measures for the development of sound and all-round education of children and teenagers in State schools, religious schools, kindergartens, teacher training and physical education colleges and organizations outside school.

7. Cooperation and guidance in matters related to the protection and education of orphans;

8. The issuing of permits for the establishment of schools and educational centres and of specialized courses for foreign citizens and for the employees of international organizations in the country, in accordance with the policy of the Government.

36. In view of the changes and developments in science and technology, particularly in the spheres of economy, agriculture, industries, mines, management, education, medicine, public health and information, Afghan employees and students should revise and renew their scientific knowledge and vocational qualifications. To achieve this objective they are sent abroad

under scholarship programmes and other educational opportunities, such as research and training programmes, that enable them to become acquainted with the culture and technology of other countries and to participate in the socio-economic development of their own country, taking into consideration its national values.

37. The law on higher education institutions in the Republic of Afghanistan, published in issue No. 510 of the Official Gazette, dated May 1982, states, with reference to article 15 of the Convention:

"Article 1.

"Higher education in the Republic of Afghanistan is free of charge based on the principle of equality of all citizens and the right to education irrespective of race, nationality, sex, religion and material and social status.

"Article 2.

"Education is free of charge in institutions of vocational training on the basis of equality of all citizens of the Republic of Afghanistan in the enjoyment of the right to education, irrespective of race, ethnic origin, conviction, religion, sex and social status, based on the all-round development of the culture of the different ethnic groups in the country."

38. The law on universities, published in issue No. 12 of the Offical Gazette, dated August 1968, states:

"Article 1.

"The universities are State universities consisting of colleges and scientific institutes established to organize higher education and services pertaining to it. The basic objective of the universities is the protection, expansion and progress of science and technology, the strengthening of the individual and social responsibility of youth and their training for the better understanding of Islamic, national, legal and political values in order to serve Afghan society and human society in general."

Article 14

39. Please refer to the explanations given with reference to article 13 of the International Covenant on Economic, Social and Cultural Rights.

Article 15

40. In accordance with article 58 of the Constitution of the Republic of Afghanistan, citizens have the right to engage in scientific, technical and artistic activities. The State ensures systematic scientific progress and the training of scientific cadres, protects the rights of authors and inventors, encourages and protects scientific research in all spheres and promotes the effective general use of the results of scientific research.

41. In accordance with article 14 of the Constitution, the State shall adopt the necessary measures to develop the culture, language and literature of the people of Afghanistan, as well as to preserve and develop the valuable cultural, traditional, linguistic, literary and folkloric legacy of all nationalities, clans and tribes.

42. In accordance with article 55 of the Constitution, citizens have the right to rest. The State establishes the working hours and the periodic holidays with pay and the specifications for work during holidays and festivals, and provides the conditions for rest and for the development of cultural and artistic establishments, physical training, sports and healthy recreation. The State entitles members of the scientific staff of universities and academics and of colleges of the armed forces to take advantage of scientific study and of other rights and privileges and establishes the conditions for the advance and development of science for the training of worthy cadres.

43. Article 3 of the rule on distinguished employees of culture, published in issue No. 646 of the Official Gazette, dated September 1981, provides that the honorary title of distinguished employee of culture be given to persons who accomplish creative work in the cultural sphere. Article 4 of this law states that this title is awarded for distinguished work in the fields of literature, the arts, journalism and cultural research. Their work should be beneficial for the moral nurturing of the people. They should have taken an active part in cultural activities for the benefit of the people and the country, should enjoy recognition, respect and prestige among the people and should have 10 years' work experience in respect of the provisions of article 3 of this law.

Conclusion

44. The provisions of articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights cover subjects relating to legislative and executive activities of the country. Therefore, the orders enshrined in the Constitution and in other legislative documents of the Republic of Afghanistan on such activities, together with the state of realization of their provisions, have been reflected in this report.

45. In accordance with article 51 of the Constitution, citizens of the Republic of Afghanistan enjoy the right to petition, criticize and make suggestions, either individually or collectively, and, in accordance with paragraph 2 of the same article, the State organs are bound to consider such petitions, criticism and proposals. Despite these provisions, so far no petition or claim has been submitted to the court for a decision regarding the violation of the provisions of the International Covenant on Economic, Social and Cultural Rights. In the event of the identification of acts running counter to the rights and basic liberties of citizens, the attorney's office is bound to take legal action and to adopt measures.

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